

Wage and Hour Division, Labor

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this regard unless relieved therefrom by some exemption in the Act. Such employers are also required to comply with specified recordkeeping requirements contained in part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 783.2 Matters discussed in this part.

This part 783 discusses the meaning and application of the exemptions provided in sections 13(a)(14) and 13(b)(6) of the Act. The provisions of section 6(b)(2) of the Act, which relate to the calculation of minimum wages and the hours worked by seamen on American vessels, are also discussed in this part. Other provisions of the Act are discussed only to make clear their relevance to these provisions and are not considered in detail in this part. Interpretations and regulations also published elsewhere in this title deal in some detail with such subjects as the general coverage of the Act (part 776 of this chapter), methods of payment of wages (part 531 of this chapter), hours worked (part 785 of this chapter), recordkeeping requirements (part 516 of this chapter), and qualifications for exempt executive, administrative, and professional employees (part 541 of this chapter). Reference should also be made to subpart G of part 570 of this chapter which contains the official interpretations of the child labor provisions of the Act. Copies of any of these documents may be obtained from any office of the Wage and Hour Division.

§ 783.3 Significance of official interpretations.

This part contains the official interpretations of the Department of Labor pertaining to the provisions of section 6(b)(2) and the exemptions provided in sections 13(a)(14) and 13(b)(6) of the Act. It is intended that the positions stated concerning the Act will serve as "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it"

(*Skidmore v. Swift*, 323 U.S. 134). The Secretary of Labor and the Administrator will follow these interpretations in the performance of their duties under the Act, unless and until they are otherwise directed by authoritative decisions of the courts or conclude upon re-examination of an interpretation that it is incorrect. The interpretations contained herein may be relied upon in accordance with section 10 of the Portal-to-Portal Act (29 U.S.C. 251-262), so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect.

§ 783.4 Basic support for interpretations.

The ultimate decisions on interpretations of the Act are made by the courts (*Mitchell v. Zachry*, 362 U.S. 310; *Kirschbaum v. Walling*, 316 U.S. 517). Court decisions supporting interpretations contained in this part are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore v. Swift*, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (reorg. Pl. 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950, 15 FR 3290). As included in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. References to pertinent legislative history are made in this part where it appears that they will contribute to a better understanding of the interpretations.

§ 783.5 Interpretations made, continued, and superseded by this part.

On and after publication of this part 783 in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until

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they are modified, rescinded or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and Code of Federal Regulations as part 783 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1961 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met by employers and employees in the application of the Act. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretations or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210, or to any Regional Office of the Division.

SOME BASIC DEFINITIONS

§ 783.6 Definitions of terms used in the Act.

The meaning and application of the provisions of law discussed in this part depend in large degree on the definitions of terms used in these provisions. The Act itself defines some of these terms. Others have been defined and construed in decisions of the courts. In the following sections some of these basic definitions are set forth for ready reference in connection with the part's discussion of the various provisions in which they appear. These definitions and their application are further considered in other statements of interpre-

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tations to which reference is made, and in the sections of this part where the particular provisions containing the defined terms are discussed.

§ 783.7 “Employer”, “employee”, and “employ”.

The Act's major provisions impose certain requirements and prohibitions on every “employer” subject to their terms. The employment by an “employer” of an “employee” is, to the extent specified in the Act, made subject to minimum wage and overtime pay requirements and to prohibitions against the employment of oppressive child labor. The Act provides its own definitions of “employer”, “employee”, and “employ”, under which “economic reality” rather than “technical concepts” determines whether there is employment subject to its terms (*Goldberg v. Whitaker House Cooperative*, 366 U.S. 28; *United States v. Silk*, 331 U.S. 704; *Rutherford Food Corp. v. McComb*, 331 U.S. 772). An “employer”, as defined in section 3(d) of the Act, “includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization”. An “employee”, as defined in section 3(e) of the Act, “includes any individual employed by an employer”, and “employ”, as used in the Act, is defined in section 3(g) to include “to suffer or permit to work”. It should be noted, as explained in part 791 of this chapter, dealing with joint employment, that in appropriate circumstances two or more employers may be jointly responsible for compliance with the statutory requirements applicable to employment of a particular employee. It should also be noted that “employer”, “enterprise”, and “establishment” are not synonymous terms, as used in the Act. An employer may have an enterprise with more than one establishment, or he may have more than one enterprise, in which he employs employees within the meaning of the Act. Also, there